

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 133**

---

**Introduced by Assembly Member Garcia**

January 12, 2007

---

An act to amend Section ~~12012.45~~ 51298 of the Government Code, relating to ~~gaming~~ *economic development*.

LEGISLATIVE COUNSEL'S DIGEST

AB 133, as amended, Garcia. ~~Tribal gaming: compact ratification: CEQA. Economic develop capital investment incentive programs: powerplants.~~

*Existing law establishes the capital investment incentive program that authorizes a local government to pay a capital investment incentive amount, as defined, to a proponent of a qualified manufacturing facility, including what types of business operate the facility.*

*This bill would include within those types of business, a business engaged in the operation of a powerplant used for the production of electricity from one or more specified energy sources.*

~~The federal Indian Gaming Regulatory Act provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature. Existing law expressly ratifies a number of tribal-state gaming compacts, and amendments of tribal-state gaming compacts, between the State of California and specified Indian tribes, and provides that, in deference to tribal sovereignty, certain actions may not be deemed projects for purposes of the California Environmental Quality Act. Existing law~~

~~provides that nothing in these provisions shall be construed to exempt a city, county, or city and county, or the California Department of Transportation, from the requirements of the California Environmental Quality Act.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 51298 of the Government Code is*  
2     *amended to read:*

3     51298. It is the intent of the Legislature in enacting this chapter  
4     to provide local governments opportunities to attract large  
5     manufacturing facilities to invest in their communities and to  
6     encourage industries such as high technology, aerospace,  
7     automotive, biotechnology, software, environmental sources, and  
8     others to locate and invest in those facilities in California.

9     (a) Commencing in the 1998–99 fiscal year, the governing body  
10    of a county, city and county, or city, may, by means of an ordinance  
11    or resolution approved by a majority of its entire membership,  
12    elect to establish a capital investment incentive program. In any  
13    county, city and county, or city in which the governing body has  
14    so elected, the county, city and county, or city shall, upon the  
15    approval by a majority of the entire membership of its governing  
16    body of a written request therefor, pay a capital investment  
17    incentive amount to the proponent of a qualified manufacturing  
18    facility for up to 15 consecutive fiscal years. A request for the  
19    payment of capital investment incentive amounts shall be filed by  
20    a proponent in writing with the governing body of an electing  
21    county, city and county, or city in the time and manner specified  
22    in procedures adopted by that governing body. In the case in which  
23    the governing body of an electing county, city and county, or city  
24    approves a request for the payment of capital investment incentive  
25    amounts, both of the following conditions shall apply:

26    (1) The consecutive fiscal years during which a capital  
27    investment incentive amount is to be paid shall commence with  
28    the first fiscal year commencing after the date upon which the  
29    qualified manufacturing facility is certified for occupancy or, if

1 no certification is issued, the first fiscal year commencing after  
2 the date upon which the qualified manufacturing facility  
3 commences operation.

4 (2) In accordance with paragraph (4) of subdivision (d), the  
5 annual payment to a proponent of each capital investment incentive  
6 amount shall be contingent upon the proponent's payment of a  
7 community services fee.

8 (b) For purposes of this section:

9 (1) "Qualified manufacturing facility" means a proposed  
10 manufacturing facility that meets all of the following criteria:

11 (A) The proponent's initial investment in that facility, in real  
12 and personal property, necessary for the full and normal operation  
13 of that facility, made pursuant to the capital investment incentive  
14 program, that comprises any portion of that facility or has its situs  
15 at that facility, exceeds one hundred fifty million dollars  
16 (\$150,000,000). Compliance with this subparagraph shall be  
17 certified by the Trade and Commerce Agency upon the agency's  
18 approval of a proponent's application for certification of a qualified  
19 manufacturing facility. An application for certification shall be  
20 submitted by a proponent to the agency in writing in the time and  
21 manner as specified by the agency.

22 (B) The facility is to be located within the jurisdiction of the  
23 electing county, city and county, or city to which the request is  
24 made for payment of capital investment incentive amounts.

25 (C) The facility is operated by ~~either~~ any of the following:

26 (i) A business described in Codes 3500 to 3899, inclusive, of  
27 the Standard Industrial Classification (SIC) Manual published by  
28 the United States Office of Management and Budget, 1987 edition,  
29 except that "January 1, 1997," shall be substituted for "January 1,  
30 1994," in each place in which it appears.

31 (ii) A business engaged in the recovery of minerals from  
32 geothermal resources, including the proportional amount of a  
33 geothermal electric generating plant that is integral to the recovery  
34 process by providing electricity for it.

35 (iii) *A business engaged in the operation of a powerplant used*  
36 *for the production of electricity from one or more of the following*  
37 *energy resources: solar thermal, wind, photovoltaic, geothermal,*  
38 *solid-fuel biomass, fuel cells using renewable fuel, small*  
39 *hydroelectric generation of 30 megawatts or less, digester gas,*

1 *landfill gas, ocean wave, ocean thermal, or tidal current, and any*  
2 *additions or enhancements to the facility using that technology.*

3 (D) The proponent is either currently engaged in commercial  
4 production or engaged in the perfection of the manufacturing  
5 process, or the perfection of a product intended to be manufactured.

6 (2) “Proponent” means a party or parties that meet all of the  
7 following criteria:

8 (A) The party is named in the application to the county, city  
9 and county, or city within which the qualified manufacturing  
10 facility would be located for a permit to construct a qualified  
11 manufacturing facility.

12 (B) The party will be the fee owner of the qualified  
13 manufacturing facility upon the completion of that facility.  
14 Notwithstanding the previous sentence, the party may enter into  
15 a sale-leaseback transaction and nevertheless be considered the  
16 proponent.

17 (C) If a proponent that is receiving capital investment incentive  
18 amounts subsequently leases the subject qualified manufacturing  
19 facility to another party, the lease may provide for the payment to  
20 that lessee of any portion of a capital investment incentive amount.  
21 Any lessee receiving any portion of a capital investment incentive  
22 amount shall also be considered a proponent for the purposes of  
23 subdivision (d).

24 (3) “Capital investment incentive amount” means, with respect  
25 to a qualified manufacturing facility for a relevant fiscal year, an  
26 amount up to or equal to the amount of ad valorem property tax  
27 revenue derived by the participating local agency from the taxation  
28 of that portion of the total assessed value of that real and personal  
29 property described in subparagraph (A) of paragraph (1) that is in  
30 excess of one hundred fifty million dollars (\$150,000,000).

31 (4) “Manufacturing” means the activity of converting or  
32 conditioning property by changing the form, composition, quality,  
33 or character of the property for ultimate sale at retail or use in the  
34 manufacturing of a product to be ultimately sold at retail.  
35 Manufacturing includes any improvements to tangible personal  
36 property that result in a greater service life or greater functionality  
37 than that of the original property.

38 (c) A city, special district, or school district may, upon the  
39 approval by a majority of the entire membership of its governing  
40 body, pay to the county, city and county, or city an amount equal

1 to the amount of ad valorem property tax revenue allocated to that  
2 city, special district, or school district, but not the actual allocation,  
3 derived from the taxation of that portion of the total assessed value  
4 of that real and personal property described in subparagraph (A)  
5 of paragraph (1) of subdivision (b) that is in excess of one hundred  
6 fifty million dollars (\$150,000,000). *If a school district makes the*  
7 *payment authorized pursuant to this subdivision, that payment*  
8 *shall be deemed to be voluntary and shall not result in any right*  
9 *to an increase in the amount of state General Fund moneys that*  
10 *is allocated pursuant to Section 8 of Article XVI of the California*  
11 *Constitution, nor shall it result in any right to an increase in the*  
12 *amount of state General Fund moneys required to be apportioned*  
13 *to the school district pursuant to Section 2558 or 42238 of the*  
14 *Education Code.*

15 (d) A proponent whose request for the payment of capital  
16 investment incentive amounts is approved by an electing county,  
17 city and county, or city shall enter into a community services  
18 agreement with that county, city and county, or city that includes,  
19 but is not limited to, all of the following provisions:

20 (1) A provision requiring that a community services fee be  
21 remitted by the proponent to the county, city and county, or city,  
22 in each fiscal year subject to the agreement, in an amount that is  
23 equal to 25 percent of the capital investment incentive amount  
24 calculated for that proponent for that fiscal year, except that in no  
25 fiscal year shall the amount of the community services fee exceed  
26 two million dollars (\$2,000,000).

27 (2) A provision specifying the dates in each relevant fiscal year  
28 upon which payment of the community services fee is due and  
29 delinquent, and the rate of interest to be charged to a proponent  
30 for any delinquent portion of the community services fee amount.

31 (3) A provision specifying the procedures and rules for the  
32 determination of underpayments or overpayments of a community  
33 services fee, for the appeal of determinations of any underpayment,  
34 and for the refunding or crediting of any overpayment.

35 (4) A provision specifying that a proponent is ineligible to  
36 receive a capital investment incentive amount if that proponent is  
37 currently delinquent in the payment of any portion of a community  
38 services fee amount, if the qualified manufacturing facility is  
39 constructed in a manner materially different from the facility as  
40 described in building permit application materials, or if the facility

1 is no longer operated as a qualified manufacturing facility meeting  
2 the requirements of paragraph (1) of subdivision (b). If a proponent  
3 becomes ineligible to receive a capital investment incentive amount  
4 as a result of an agreement provision included pursuant to this  
5 subparagraph, the running of the number of consecutive fiscal  
6 years specified in an agreement made pursuant to subdivision (a)  
7 is not tolled during the period in which the proponent is ineligible.

8 (5) A provision that sets forth a job creation plan with respect  
9 to the relevant qualified manufacturing facility. The plan shall  
10 specify the number of jobs to be created by that facility, and the  
11 types of jobs and compensation ranges to be created thereby. The  
12 plan shall also specify that for the entire term of the community  
13 services agreement, both of the following shall apply:

14 (A) All of the employees working at the qualified manufacturing  
15 facility shall be covered by an employer-sponsored health benefits  
16 plan.

17 (B) The average weekly wage, exclusive of overtime, paid to  
18 all of the employees working at the qualified manufacturing  
19 facility, who are not management or supervisory employees, shall  
20 be not less than the state average weekly wage.

21 (C) *Nothing in this chapter shall be interpreted to require or*  
22 *authorize any recipient powerplant qualified under clause (iii) of*  
23 *subparagraph (C) of paragraph (1) of subdivision (b) to reduce*  
24 *wages or benefits established under any collective bargaining*  
25 *agreement or state or federal prevailing wage law.*

26 For the purpose of this subdivision, “state average weekly wage”  
27 means the average weekly wage paid by employers to employees  
28 covered by unemployment insurance, as reported to the  
29 Employment Development Department for the four calendar  
30 quarters ending June 30 of the preceding calendar year.

31 (6) (A) In the case in which the proponent fails to operate the  
32 qualified manufacturing facility as required by the community  
33 services agreement, a provision that requires the recapture of any  
34 portion of any capital investment incentive amounts previously  
35 paid to the proponent equal to the lesser of the following:

36 (i) All of the capital investment incentive amounts paid to the  
37 proponent, less all of the community services fees received from  
38 the proponent, and less any capital investment incentive amounts  
39 previously recaptured.

1 (ii) The last capital investment incentive amount paid to the  
2 proponent, less the last community services fee received from the  
3 proponent, multiplied by 40 percent of the number of years  
4 remaining in the community services agreement, but not to exceed  
5 10 years, and less any capital investment incentive amounts  
6 previously recaptured.

7 (B) If the proponent fails to operate the qualified manufacturing  
8 facility as required by the community services agreement, the  
9 county, city and county, or city may, upon a finding that good  
10 cause exists, waive any portion of the recapture of any capital  
11 investment incentive amount due under this subdivision. For the  
12 purpose of this subdivision, good cause includes, but is not limited  
13 to, the following:

14 (i) The proponent has sold or leased the property to a person  
15 who has entered into an agreement with the county, city and  
16 county, or city to assume all of the responsibilities of the proponent  
17 under the community services agreement.

18 (ii) The qualified manufacturing facility has been rendered  
19 inoperable and beyond repair as a result of an act of God.

20 (C) For purposes of this subdivision, failure to operate a  
21 qualified manufacturing facility as required by the community  
22 services agreement includes, but is not limited to, *the* failure to  
23 establish the number of jobs specified in the jobs creation plan  
24 created pursuant to paragraph (5).

25 (e) (1) Each county, city and county, or city that elects to  
26 establish a capital investment incentive program shall notify the  
27 Trade and Commerce Agency of its election to do so no later than  
28 June 30th of the fiscal year in which the election was made.

29 (2) In addition to the information required to be reported  
30 pursuant to paragraph (1), each county, city and county, or city  
31 that has elected to establish a capital investment incentive program  
32 shall notify the Trade and Commerce Agency each fiscal year no  
33 later than June 30th of the amount of any capital investment  
34 incentive payments made and the proponent of the qualified  
35 manufacturing facility to whom the payments were made during  
36 that fiscal year.

37 (3) The Trade and Commerce Agency shall compile the  
38 information submitted by each county, city and county, and city  
39 pursuant to paragraphs (1) and (2) and submit a report to the

Legislature containing this information no later than October 1, every two years commencing October 1, 2000.

~~SECTION 1. Section 12012.45 of the Government Code is amended to read:~~

~~12012.45. (a) The following tribal-state gaming compacts and amendments of tribal-state gaming compacts entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) are hereby ratified:~~

~~(1) The amendment of the compact between the State of California and the Buena Vista Rancheria of Me-Wuk Indians, executed on August 23, 2004.~~

~~(2) The compact between the State of California and the Fort Mojave Indian Tribe, executed on August 23, 2004.~~

~~(3) The compact between the State of California and the Coyote Valley Band of Pomo Indians, executed on August 23, 2004.~~

~~(4) The amendment to the compact between the State of California and the Ewiiapaayp Band of Kumeyaay Indians, executed on August 23, 2004.~~

~~(5) The amendment to the compact between the State of California and the Quechan Tribe of the Fort Yuma Indian Reservation, executed on June 26, 2006.~~

~~(b) The terms of each compact apply only to the State of California and the tribe that has signed it, and the terms of these compacts do not bind any tribe that is not a signatory to any of the compacts. The Legislature acknowledges the right of federally recognized tribes to exercise their sovereignty to negotiate and enter into compacts with the state that are materially different from the compacts ratified pursuant to subdivision (a).~~

~~(c) (1) In deference to tribal sovereignty, none of the following shall be deemed a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code):~~

~~(A) The execution of an amendment of a tribal-state gaming compact ratified by this section.~~

~~(B) The execution of a tribal-state gaming compact ratified by this section.~~

~~(C) The execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express authority of, or as expressly referenced in, a tribal-state~~



1 ~~gaming compact or an amended tribal-state gaming compact~~  
2 ~~ratified by this section.~~

3 ~~(D) The execution of an intergovernmental agreement between~~  
4 ~~a tribe and the California Department of Transportation negotiated~~  
5 ~~pursuant to the express authority of, or as expressly referenced in,~~  
6 ~~a tribal-state gaming compact or an amended tribal-state gaming~~  
7 ~~compact ratified by this section.~~

8 ~~(E) The on-reservation impacts of compliance with the terms~~  
9 ~~of a tribal-state gaming compact or an amended tribal-state gaming~~  
10 ~~compact ratified by this section.~~

11 ~~(F) The sale of compact assets, as defined in subdivision (a) of~~  
12 ~~Section 63048.6, or the creation of the special purpose trust~~  
13 ~~established pursuant to Section 63048.65.~~

14 ~~(2) Except as expressly provided herein, nothing in this~~  
15 ~~subdivision shall be construed to exempt a city, county, or city~~  
16 ~~and county, or the California Department of Transportation, from~~  
17 ~~the requirements of the California Environmental Quality Act.~~

18 ~~(d) Revenue contributions made to the state by tribes pursuant~~  
19 ~~to the tribal-state gaming compacts and amendments of tribal-state~~  
20 ~~gaming compacts ratified by this section shall be deposited in the~~  
21 ~~General Fund.~~